

TERMS AND CONDITIONS OF BUSINESS

1. Interpretation

In these terms and conditions (**Conditions**) the following terms have the following meanings:
Act: the Data Protection Act 1998.

Commencement Date: the date specified in the Engagement Letter.

Contract: the Contract incorporating the Engagement Letter and these Conditions between you and SIMPLYVAT.com for the supply of the Services.

You or Your: the person, firm or company which purchases Services from SIMPLYVAT.com.

Data: all documents, information and data required by SIMPLYVAT.com, provided by you, relating to, or in connection with, the Services including without limitation relevant VAT records, records showing supplies and all VAT related correspondence with Taxation Authorities.

Documentation: all documents and materials to be supplied by SIMPLYVAT.com in relation to, or in connection with, the Services.

Engagement Letter: the letter of engagement sent to you by SIMPLYVAT.com.

SIMPLYVAT.com, We or Us: SIMPLYVAT.com, a trading name of Borderfree Trade Limited (company number: 08216948) whose registered office is at 4th Floor 60 Landsdowne Place Hove East Sussex BN3 1FG England.

Services: the services to be provided by SIMPLYVAT.com under the Contract as set out in the Engagement Letter, together with any other services which we provide, or agree to provide, to you.

Taxation Authority: any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official competent to impose, administer, levy, assess or collect Tax in the United Kingdom or elsewhere, applicable to the Services.

VAT: Value Added Tax or any other equivalent consumption based tax, in any jurisdiction as defined under the UK Value Added Tax Act 1994.

VAT Registration: the process of listing with a government as a person eligible for the return of VAT or any other equivalent.

2. Your Contract with SIMPLYVAT.com

2.1 These Conditions apply to the Services and shall, together with the Engagement Letter, apply to and be incorporated into the Contract to the exclusion of all other terms and conditions.

2.2 In the event of any conflict between the terms of the Engagement Letter and these Conditions, the terms contained in the Engagement Letter shall prevail.

3. Commencement and duration

3.1 The Services supplied under the Contract shall be provided by SIMPLYVAT.com to you from the Commencement Date and be governed by the terms of the Contract.

3.2 You appoint SIMPLYVAT.com to carry out the Services exclusively in the relevant jurisdiction specified in the Engagement Letter and you shall not appoint any other third party to carry out the Services in that jurisdiction.

3.3 Subject to condition 10 and except where the Services only comprise VAT Registration as confirmed in the Engagement Letter, the Services supplied under the Contract shall continue to be supplied for a period of 12 months (**Initial Term**) and after that shall continue to be supplied unless:

- a) you terminate the Contract by giving us not less than 2 months' written notice, such notice to be given on or after the Initial Term; or
- b) SIMPLYVAT.com terminates the Contract at any time, during or after the Initial Term, by giving you not less than 2 months' written notice.

4. The Services and SIMPLYVAT.com's obligations

4.1 The Services to be supplied to you shall be as specified in the Engagement Letter. SIMPLYVAT.com shall use reasonable endeavours to provide the Services and to deliver the Documentation to you, in material accordance with the Engagement Letter. If the Data you provide to SIMPLYVAT.com is incomplete, inaccurate, delayed or defective in any way, SIMPLYVAT.com reserves the right to make additional charges in relation to the Services.

4.2 Where the Services involve VAT Registration, SIMPLYVAT.com may not commence the VAT Registration application until we have received payment in full of all of our charges relating to this service. In any event, SIMPLYVAT.com shall not be obliged to release your VAT registration details to you until we have received payment in full of all of our charges.

4.3 You acknowledge and agree that SIMPLYVAT.com may act as an intermediary and may appoint third parties to carry out all or any part of the Services. SIMPLYVAT.com does not directly provide advice in relation to accounting and taxation matters other than VAT.

4.4 SIMPLYVAT.com shall use reasonable endeavours to meet any performance dates for the Services.

5. Client's obligations

5.1 You shall:

- a) co-operate with SIMPLYVAT.com and ensure that all of your employees co-operate, in all matters relating to the Services;
- b) provide to SIMPLYVAT.com, in a timely manner, such Data and other information as we may request and ensure that it is complete and accurate in all respects;
- c) comply at all times with its obligations and duties as set out in the Engagement Letter;
- d) obtain and maintain all necessary licences and consents and comply with all relevant legislation and requests made by Taxation Authorities in relation to the Services;
- e) immediately notify SIMPLYVAT.com in writing of any errors, omissions, defects or other problems with the Data;
- f) be responsible for and promptly make payment of VAT directly to the relevant Taxation Authority. SIMPLYVAT.com shall not be liable for payment, late payment or non-payment of any VAT or any related penalties.

5.2 If SIMPLYVAT.com's performance of its obligations under the Contract is prevented or delayed by any act or omission by you, your agents, subcontractors, consultants or employees, we shall not be liable for any costs, charges or losses sustained or incurred by you arising directly or indirectly from such prevention or delay.

5.3 You shall be liable to pay to SIMPLYVAT.com, on demand, all costs, charges or losses sustained or incurred by us arising directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of your obligations under the Contract, subject to us confirming such costs, charges and losses to you in writing.

5.4 You shall not directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of or engagement by SIMPLYVAT.com, or deal with other than in the provision of the Services, any person employed or engaged by us in the provision of the Services at any time during the term of the Contract or for a further period of 6 months after the termination of the Contract, other than by means of a national advertising campaign not specifically targeted at any of our staff.

5.5 If you commit any breach of clause 5.4, you shall, on demand, pay to SIMPLYVAT.com a sum equal to one year's basic salary or the annual fee that was payable by us to that employee, worker or independent contractor plus (where applicable) the recruitment costs incurred by SIMPLYVAT.com in replacing such person.

6. Charges and payment

6.1 In consideration of the provision of the Services by SIMPLYVAT.com, you shall pay the charges in the manner as set out in the Engagement Letter. All charges must be paid in the currency stated in the Engagement Letter.

6.2 Unless specified otherwise in the Letter of Engagement, you shall pay each invoice submitted to you by SIMPLYVAT.com, in full and in cleared funds, within 14 days of the date of the relevant invoice to the bank account notified to you in writing by us.

6.3 Unless otherwise stated all prices are exclusive of VAT, which shall where applicable, be charged by SIMPLYVAT.com to you at the applicable rate. Payment on time by you of all charges is a condition of the Contract.

6.4 SIMPLYVAT.com shall be entitled to charge additional sums that are deemed reasonably necessary by us as a result of, or in connection with, any failure by you to comply with your obligations under the Contract.

6.5 After the Initial Term, you agree that SIMPLYVAT.com may review and increase its charges provided that such charges cannot be increased more than once in any 12 month period which will be no more than 10% or the cost of inflation – whichever is less. We will give you written notice of any such increase 1 month before the proposed date of such increase. If the proposed increase is not acceptable to you within 14 days of such written notice, you may terminate the Contract by giving 2 months' written notice to us and our charges shall not increase during such notice period.

6.6 Without prejudice to any other right or remedy that it may have, if you fail to pay SIMPLYVAT.com any sum on the due date, we may:

- a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate of the Bank of England from time to time, accruing on a daily basis until payment is made;
- b) withhold any Documentation, Data and other papers supplied by or to you until payment is made in full;
- c) suspend all Services until payment has been made in full;
- d) terminate the Contract.

6.7 All sums payable to SIMPLYVAT.com under the Contract shall become due immediately on its termination, despite any other provision.

6.8 SIMPLYVAT.com may, without prejudice to any other rights it may have, set off any liability of you to us against any liability of us to you.

6.9 From time to time, SIMPLYVAT.com may receive benefits or commissions where we refer you to third parties to carry out work on your behalf. In the event that we refer you to a third party for the provision of additional services and you instruct them to carry out work, we shall not be liable for that third party's acts or omissions.

7. Intellectual property rights and confidentiality

7.1 As between you and SIMPLYVAT.com, all intellectual property rights and all other rights in the Documentation shall be owned by us. Subject to payment by you of SIMPLYVAT.com's charges, we grant you a non-exclusive royalty free license to make reasonable use of the Documentation.

7.2 You and SIMPLYVAT.com agree that each of us shall not at any time during the Contract and for a period of 12 months after termination of the Contract disclose to any person any information of a confidential nature that has been disclosed to us by the other party, except as permitted by paragraph 7.3.

7.3 SIMPLYVAT.com may:

- a) disclose your confidential information to SIMPLYVAT.com's employees, agents, consultants or subcontractors who need to know it for the purpose of discharging SIMPLYVAT.com's obligations to you under the Contract or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority (including Taxation Authorities);
- b) With written consent use your company name and logo in SIMPLYVAT.com's customer lists (whether online or offline) and other marketing materials or ask you to participate in a press release which announces your decision to use SIMPLYVAT.com's services.

7.4 SIMPLYVAT.com, its agents and subcontractors may retain files and paperwork relating to the Services and your affairs for any period that they deem reasonably necessary, but it is your ultimate responsibility to retain originals and copies of such documentation. We reserve the right to make charges for time spent at your request for copying and retrieving paperwork from storage.

8. Limitation of liability

8.1 This clause 8 sets out the entire financial liability of SIMPLYVAT.com (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to you in respect of:

- a) any breach of the Contract;
- b) any use made by you of the Services, the Documentation or any part of them; and
- c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

8.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.3 Nothing in these Conditions limits or excludes the liability of SIMPLYVAT.com for death or personal injury resulting from negligence, or, for any damage or liability incurred by you as a result of fraud or fraudulent misrepresentation by us.

8.4 Subject to clause 8.2 and clause 8.3:

- a) SIMPLYVAT.com shall not be liable for:
 - i. loss of profits;
 - ii. loss of business;
 - iii. depletion of goodwill and/or similar losses;
 - iv. loss of anticipated savings;
 - v. loss of corruption of data or information;
 - vi. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;
 - vii. any fines, penalties or charges issued by any Taxation Authority.
- b) SIMPLYVAT.com's total liability to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract shall not exceed the sum of £1,000,000.

9. Data protection

9.1 You acknowledge and agree that details of your name, address, payment record and personal data provided to us may be supplied to applicable Taxation Authorities and third parties and that personal data will be processed by and on behalf of SIMPLYVAT.com by third parties in connection with the Services.

9.2 You acknowledge that for the purposes of the Act you are a data controller and SIMPLYVAT.com is acting as a data processor in respect of any personal data. You agree:

- a) that personal data may be lawfully transferred or stored outside of the EEA or the country in which you are located in connection with the Services;
- b) to ensure that you are entitled to transfer personal data to us and that the subjects of such data have given you their written consent to such transfer and processing in accordance with applicable legislation;
- c) to indemnify and keep indemnified (on demand), and defend at your own expense, SIMPLYVAT.com against all costs, claims, damages or expenses incurred by us or for which we may become liable due to:
 - i. any failure by you to comply with any of your obligations under the Act or any analogous legislation;
 - ii. any claim or request made against us by any person engaged or formerly engaged by you.

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10. Termination

10.1 Without prejudice to any other rights or remedies which SIMPLYVAT.com may have, we may terminate the Contract without liability to you if:

- a) you commit a breach of any of the terms of the Contract;
- b) you become insolvent, or commit an act of bankruptcy, or a winding up order is made against it, or you make any arrangements with its creditors, or any execution or distress is levied upon any of your property, or you are unable to pay your debts as they fall due, or a petition is filed or a resolution is passed for your insolvency, or any appointment is made to the Court for the appointment of an administrator, or any judgment against you shall remain unsatisfied for 14 days; or
- c) any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in paragraph 10.1(b).

10.2 On termination of the Contract for any reason:

- a) you shall immediately pay to us all of SIMPLYVAT.com's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt; and
- b) the accrued rights of SIMPLYVAT.com and liabilities of you as at termination shall not be affected.

11. Notices

Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or the international equivalent to the other party, or via email. Any notice shall be deemed to have been duly received if delivered personally, when left at the address of the other party, or, if sent by pre-paid first-class post or recorded delivery or the international equivalent, or via email on the second business day after posting.

12. Miscellaneous

12.1 **Complaints:** Any complaint about the Services in the first instance should be raised with the member of SIMPLYVAT.com's team responsible for carrying out work for you who will then investigate the issue and try to resolve it. If you remain dissatisfied, you should refer the matter in writing to the CEO to the address notified to you, or by email to claire.taylor@simplyvat.com.

12.2 **Waiver:** A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

12.3 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between you and us, or any other third party.

12.4 **Third party rights:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.5 **Matters outside our control:** We shall have no liability to you under the Contract if we are prevented from, or delayed in performing, our obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including the default of suppliers or subcontractors.

12.6 **Variation:** The Contract may only be amended or varied in writing signed by a duly authorised representative of SIMPLYVAT.com.

12.7 **Assignment:** SIMPLYVAT.com may at any time assign, transfer, charge, mortgage, sub-contract or deal in any other manner with all or any of its rights under the Contract and may sub-contract or delegate in any manner any or all of its obligations under the Contract to any third party. You may not assign or deal in any manner with the Contract without the prior written consent of us.

12.8 **No reliance:** You acknowledge that, in entering into the Contract you have not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty - whether made negligently or innocently - other than for breach of contract. Nothing in these Conditions shall limit or exclude any liability for fraud.

12.9 **Severance:** If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

12.10 **Additional information:** Our VAT number is 176 2567 81. Our professional liability insurance is provided by Manchester Underwriting Management Limited and covers the provision of services in England and Wales and anywhere in the world.

12.11 **Jurisdiction:** The validity, construction and performance of the Contract shall be governed by English law and shall be subject to the non-exclusive jurisdiction of the English courts.